

### **REMARKS**

The applicant has carefully reviewed the official action mailed on March 25, 2009, and the references cited therein. By way of this response, claims 1, 5, 34, 49, 50, 51 and 55 have been amended. The applicant respectfully requests reconsideration of this application in view of the following remarks.

#### **Interview Summary and Application Status**

This application was filed on December 21, 2001, with 51 claims. On October 31, 2003, the applicant submitted a Preliminary Amendment adding claims 52-98. On June 17, 2004, an agent for the applicant confirmed that she spoke with Examiner Brown and received confirmation that a facsimile transmission of the Preliminary Amendment to Examiner Brown had been received earlier that day. On January 25, 2007, the Office mailed an action in which only claims 1-50 were examined. In the Spring of 2007, prior to the expiration of the statutory reply period set forth in the incomplete action of January 25, 2007, Mark Hanley, an agent for the applicant, contacted Examiner Brown and informed him of the failure to examine all pending claims. Examiner Brown acknowledged this oversight and indicated that a new action, to supersede the incomplete action of January 25, 2007 was forthcoming. This notification and acknowledgement occurred approximately two years prior to March 23, 2009 date of the most recent Interview. The superseding action was mailed on March 25, 2009.

Because the applicant received notice from the Office that the incomplete action of January 25, 2007 was effectively nullified and a new time period for replying was set forth in the March 25, 2009 action, the present application has been continuously pending since December 21, 2001. Consequently, in accordance with

MPEP §§ 710.01, 710.02 and 710.06 and 37 C.F.R. §§ 1.135(a) and 1.136(a)(1)(i), the application never became abandoned and no extensions of time are required for this timely-filed response.

Furthermore, because the applicant did not receive a notification under 35 U.S.C. § 132 until seven years, three months and five days after the filing date of the application, in accordance with MPEP § 2730, 35 U.S.C. § 154(b)(1)(A)(i), and 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1), the present application is afforded the maximum Patent Term Adjustment of five years.

### **The Rejections under 35 U.S.C. § 101**

In the official action, claims 1 and 49-51 were rejected under 35 U.S.C. § 101. The applicants respectfully traverse these rejections.

The test for determining whether method claims 1 and 49-51 recite statutory subject matter is the machine-or-transformation test set forth by the Federal Circuit in *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008). *Bilski's* machine-or-transformation test provides that a method claim is statutory under 35 U.S.C. § 101 when the claim is either tied to a particular machine or transforms an article. *Id.* at 961. Thus, *Bilski's* machine-or-transformation test plainly provides two alternative ways in which a method claim may be found statutory.

The independent claims 1 and 49-51 recite methods involving software agents or processes that include use of a machine, i.e., a processor. These claims clearly meet the first prong of *Bilski's* machine-or-transformation test because the methods of these claims are tied to a particular machine. Therefore all the claims recite statutory subject matter. Accordingly, withdrawal of the rejections under 35 U.S.C § 101 is respectfully requested.

### **The Rejections under 35 U.S.C. § 103**

In the official action, claims 1, 3, 5-51, 53 and 55-98 are rejected under 35 U.S.C. § 103 as unpatentable over Davis (U.S. 5,796,952) in view of Astiz (U.S. 5,918,012); claims 2 and 52 are rejected under 35 U.S.C. § 103 as unpatentable over Davis in view of Astiz and Welsh (U.S. 5,374,951); and claims 4 and 54 are rejected under 35 U.S.C. § 103 as unpatentable over Davis in view of Astiz and Lu (U.S. 2003/0110485).

Independent claim 1 recites, *inter alia*, a method performed by a software agent of a first entity measuring the exposure of an individual to electronic media using a processor to obtain information identifying the electronic media from a cooperative media handler, wherein the cooperative media handler performs a configurable media research task that is associated with the handling of electronic media by the cooperative media handler. The art cited in the present action fails to teach or suggest a cooperative media handler that performs a configurable media research task that is associated with the handling of electronic media by the cooperative media handler, as recited in claim 1.

While Davis generally describes monitoring usage of a resource downloaded from a server to a client computer by embedding a tracking program in the downloaded resource (e.g., a file), Davis does not teach or suggest a cooperative media handler (e.g., a browser, plug-in, etc.) that performs a configurable media research task that is associated with the handling of electronic media by the cooperative media handler, as recited in claim 1. On the contrary, it is the tracking program described by Davis, not a media handler, which performs media research tasks.

Further, while Astiz does appear to describe an Application Program Interface that enables a viewer 31 to communicate with browser 32, Astiz does not teach or suggest a cooperative media handler that performs a configurable media research task that is associated with the handling of electronic media by the cooperative media handler, as recited in claim 1. On the contrary, even if either the viewer 31 or the browser 32 is a media handler, a point which the applicant does not concede, neither of these applications is described as being configurable, much less configurable to perform a media research task as recited in claim 1.

Thus, because neither Davis nor Astiz describes, teaches or suggests a cooperative media handler that performs a configurable media research task that is associated with the handling of electronic media by the cooperative media handler, as recited in claim 1, no combination of Davis and Astiz can render claim 1 obvious. Accordingly, the applicant respectfully submits that claim 1 and all claims dependent thereon are in condition for allowance for this reason alone.

In addition, the remaining references fail to overcome the above-noted deficiencies of Davis and, thus, no combination of Davis and these references can render claim 1 unpatentable. Accordingly, the applicant respectfully submits that independent claim 1 and all claims dependent thereon are in condition for allowance, for this reason alone.

Independent claims 49-51 and their dependents contain recitations similar to those recitations of claim 1 discussed above. Therefore, the remaining claims are also believed to be patentable for reasons similar to those set forth above in connection with independent claim 1.

For at least the foregoing reasons, the applicant respectfully submits that all pending claims are now in condition for allowance. If there are any remaining issues

in this application, the applicant urges the examiner to contact the undersigned attorney at the number listed below.

The applicant believes no payment is due for this submission. However, the Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 50-2455.

Respectfully submitted,

HANLEY, FLIGHT & ZIMMERMAN, LLC  
USPTO Customer Number 81905  
150 S. Wacker Drive  
Suite 2100  
Chicago, Illinois 60606  
(312) 580-1020

By: /Mark G. Hanley/  
Mark G. Hanley  
Registration No.: 44,736  
Attorney for Applicant

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